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Insurance -- Loan Receipt -- Real Party in Interest

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Various reasons have been assigned to support the physician-patient privilege. Generally, the emphasis is placed on stimulating a full disclosure by the patient to his physician to allow the most effective medical treatment.[18] Other reasons given in support of the privilege are the protection of the sensibilities and right of privacy of the patient by preventing public disclosure of his maladies,[19] or a desire to give the patient complete control over information relative to his condition.[20]

Most legal scholars who have considered the privilege do not accredit the reasons advanced in its favor and have long been united in disapproval of creation of the privilege.[21] In practice the privilege is most often asserted in three major classes of litigation in which medical testimony is most essential for disclosure of the full truth — actions on life insurance policies where misrepresentations of the deceased as to health are at issue, actions for bodily injuries where the plaintiff's bodily condition is at issue, and testamentary actions in which the mental state and capacity of the testator are at issue.[22] Critics of the privilege hold that its usual effect is to obscure justice by suppressing the facts most revelant to the issue in the interest of protecting the patient against possible embarrassing disclosures.[23]

The interpretation given the 1951 Florida Statute is commendable. The value of the physician-patient privilege is, at most, doubtful. The statute itself gives no clear indication of a legislative intent to create such physician-patient privilege. Rather it appears designed to prevent an extra-judicial breach of the patient's confidence.

Milton S. Marcus

INSURANCE—LOAN RECEIPT—REAL PARTY IN INTEREST

After a loss, the insurance company advanced to the insured the amount of the loss in return for which the insured executed a "loan receipt" repayable only to the extent of any net recovery he might make against any third party responsible for the loss. In an action by the insured, the defendant moved to have the insurance company joined as a necessary plaintiff. *Held*, the loan did not constitute a payment which

18. See Arizona & New Mexico Ry. v. Clark, 235 U.S. 669 (1915).

19. Munzer v. Swedish American Line, 35 F. Supp. 493 (S.D. N.Y. 1940); Williams v. State, 65 Okla. 336, 86 P.2d 1013 (1939).

20. Woernley v. Electromatic Typewriters Inc., 271 N.Y. 228, 2 N.E.2d 638 (1936).

21. 1 GREENLEAF, EVIDENCE § 247(a) (16th ed. 1899); 8 WIGMORE, EVIDENCE § 2380(a) (3d ed. 1940); Chaffee, *The Progress of the Law, 1919-1922*, 35 HARV. L. REV. 689 (1922).

22. 1 GREENLEAF, EVIDENCE § 247(a); 8 WIGMORE, EVIDENCE § 2380(a).

23. Curd, *Privileged Communications Between The Doctor And His Patient—An Anomaly Of The Law*, 44 W.VA. L. Q. 165 (1937); Lipscomb, *Privileged Communications Statute—Sword And Shield*, 16 MISS. L. J. 181 (1944); Morgan, *Suggested Remedy For Obstructions To Expert Testimony By Rules Of Evidence*, 10 U. of CHI. L. REV. 285 (1944).

would make the insurance company the "real party in interest" so that it would be a necessary party to the action. *Gould v. Weibel*, 62 So.2d 47 (Fla. 1952).

The "loan receipt" is a device used by insurance companies to effectuate speedy payment and at the same time avoid the consequences of subrogation.[1] The question most often at issue in the courts is whether the transaction is a loan as it purports to be, or is in actuality a payment[2] which makes the insurer the real party in interest.[3] The courts have almost uniformly held that the "loan receipt" is not payment.[4]

At common law, before the passage of the "real party in interest" statutes, when the insurer had paid the insured the full amount of the loss it was generally held that all the suits at law against a third party tortfeasor had to be brought in the name of the insured.[5] In some instances an action was allowed in the name of the insured "for the use of the insurer."[6] The insurer could sue in its own name only in equity or admiralty proceedings.[7]

The majority of states have now adopted statutes concerning the real party in interest. The most popular type of these statutes makes it mandatory that the action be prosecuted in the name of the real party in interest.[8] Several states, including Florida, have enacted statutes making it permissive, but not mandatory, that an action be prosecuted by the

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1. Luckenbach v. W. J. McCahan Sugar Refining Co., 248 U.S. 139 (1918); McCann v. Dixie Lake & Realty Co., 44 Ga. 700, 162 S.E. 869 (1932); Newco Land Co. v. Martin, 358 Mo. 99, 213 S.W.2d 504 (1948).

2. First Nat. Bank of Ottawa v. Lloyds of London, 116 F.2d 221 (7th Cir. 1940); DeJean v. Louisiana Western R.R., 167 La. 11, 118 So. 822 (1928); Kossmehl v. Millers Nat. Inc. Co., 238 Mo. 671, 185 S.W.2d 293 (1945).

3. The Plow City, 122 F.2d 816 (3d Cir. 1941); Wilson v. Anderson, 113 Colo. 396, 157 P.2d 690 (1945); State Farm Mut. Ins. Co. v. Hall, 292 Ky. 221, 165 S.W.2d 838 (1942); Blair v. Espeland, 231 Minn. 444, 43 N.W.2d 274 (1950); Shiman Bros. & Co. v. Nebraska Nat. Hotel Co., 143 Neb. 404, 9 N.W.2d 807 (1943); Thompson Heating Corp. v. Hardware Indemnity Ins. Co. of Minn., 72 Ohio 55, 50 N.E.2d 671 (1943); Phillips v. Clinton Mfg. Co., 204 S.C. 496, 30 S.E.2d 146 (1944).

4. Luckenbach v. W. J. McCahan Sugar Refining Co., 248 U.S. 139 (1918); Dixey v. Federal Compress & Warehouse Co., 132 F.2d 275 (8th Cir. 1942); First Nat. Bank of Ottowa v. Lloyds of London, 116 F.2d 221 (7th Cir. 1940); State Farm Mut. Ins. Co. v. Hall, 292 Ky. 221, 165 S.W.2d 838 (1942); Shiman Bros. & Co. v. Nebraska Nat. Hotel Co., 143 Neb. 404, 9 N.W.2d 807 (1943). *But cf.* American Alliance Ins. Co. v. Capital Nat. Bank, 75 Cal.2d 787, 171 P.2d 449 (1946); Cleveland Paint & Color Co. v. Bauer Mfg. Co., 155 Ohio 17, 97 N.E.2d 545 (1951); Deming v. Merchants' Cotton Press & Storage Co., 90 Tenn. 306, 17 S.W. 89 (1891).

5. Hall v. Nashville, 80 U.S. 367 (1871); American Ry. v. Mattei, 45 F.2d 307 (1st Cir. 1930); Louisville & N. R.R. v. Manchester Mills, 88 Tenn. 653, 14 S.W. 314 (1890).

6. Atlantic Coastline R.R. v. Campbell, 104 Fla. 398, 139 So. 886 (1932).

7. Liverpool Steam Co. v. Phoenix Ins. Co., 120 U.S. 397 (1888); "The "Potomac", 105 U.S. 630 (1881).

8 . ARK. STAT. ANN. § 27-801 (1947); CAL. CODE CIV. PROC. § 367 (1949); COLO. STAT. ANN. rule 17a (1935); IDAHO CODE ANN. § 5-301 (1947); IND. STAT. ANN. § 2-201 (Burns 1951); KAN. GEN. STAT. § 60-401 (1949); KY. CODES CIV. PRAC. § 18 (1948); MD. ANN. CODE GEN. LAWS Art. 75, § 2 (1949); MICH. COMP. LAWS § 612.2 (1949); MINN. STAT. § 540.02 (1948); MONT. REV. CODES ANN. § 938-2801 (1947); NEB. REV. STAT. § 25-301 (1943); N.M. STAT. ANN. § 19-101 (17a) (1941); N.C. GEN. STAT.

real party in interest.[9] A third type of statute, which is applied in New York and Pennsylvania, makes it mandatory that an action be prosecuted in the name of the real party in interest, but makes a specific exception where subrogation or a "loan receipt" transaction has occurred.[10]

Under the specific and permissive statutes no real problem arises over the "loan receipt". However, under the mandatory statutes, if a state holds that a "loan receipt" is payment, then the interpretation the court puts on the phrase "real party in interest" becomes of importance. The majority of jurisdictions hold that the real party in interest is the person who is to be benefited or injured by the judgment.[11] Under this view it is held that the insurer must bring the action when the insured has been fully paid.[12] Another view prescribes that the real party in interest is the person who holds the legal title to the claim.[13] Here it would seem that the action must be brought by the insured.[14]

There can be little doubt that the appearance of an insurance company in legal proceedings tends to prejudice the jury and obstruct justice. The courts, by construing the "loan receipts" as loans and not payments and by allowing the insurance company to sue in the name of the insured, are not only giving effect to the intent of the parties, but are aiding in the procurement of a fair trial.

Larry Hoffman

LABOR LAW — LEGALITY OF PEACEFUL PICKETING DETERMINED BY UNION'S OBJECTIVES

Plaintiff's employees were unwilling to join defendant's labor union. The defendant union picketed plaintiff's plant, interfering with the sale and distribution of company's products, and causing injury to the plaintiff and its employees, in an attempt to compel the company to force its employees to join the union. In an action to enjoin defendant's picketing, *held* that the plaintiff is entitled to an injunction. An attempt to force employees to join

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§ 1-57 (1943); N.D. Rev. Code § 28-0201 1943); Ohio Gen. Code Ann. § 11241 (Supp. 1952); Okla. Stat. Ann. tit. 12, § 1221 (Supp. 1952); Ore. Comp. Laws Ann. § 51-301 (1940); S.C. Code § 10-287 (1952); S.D. Code § 33.0401 (1939); Utah Code Ann. rule 17a (1953).

9. Fla. Stat. § 45.01 (1951); N.J. Rev. Stat. § 21.26-24 (1937).

10. N.Y. Civ. Prac. Act § 210; Pa. Stat. Ann. tit. 12, rule 2002 (1952).

11. Lyons v. Chapman, 40 Ohio 1, 178 N.E. 24 (1931); Sunshine Oil Co. v. Chantry, 186 Okla. 49, 96 P.2d 20 (1939).

12. Marine Ins. Co. v. St. Louis I. M. & S. Ry., 41 Fed. 643 (C.C. E.D. Ark. 1890); Pittsburgh C. C. & St. Louis Ry. v. Home Ins. Co. of New York, 183 Ind. 355, 108 N.E. 525 (1915); Powell & Powell v. Wake Water, 171 N.C. 290, 88 S.E. 426 (1916); Sims v. Mutual Fire Ins. Co. of Town of La Prairie, 101 Wis. 59, 77 N.W. 908 (1899).

13. Illinois Cen. R.R. v. Hicklin, 131 Ky. 624, 115 S.W. 752 (1909); Alaska Pac. S.S. v. Sperry Flour, 99 Wash. 227, 162 Pac. 26 (1917).

14. *Ibid.*